

EXHIBIT "E"

1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO

2 - - - - - x  
MAFCOTE INCORPORATED,

3 Plaintiff,

4 -against-

5 GENATT ASSOCIATES, INC., Defendant and  
6 Third-Party Plaintiff,

7 -against-

8 CONTINENTAL CASUALTY INSURANCE COMPANY,

9 Third-Party Defendant.

10 - - - - - x  
11 140 Broadway  
New York, New York

12 September 19, 2006  
13 9:23 a.m.

14 DEPOSITION of CONTINENTAL CASUALTY  
15 INSURANCE COMPANY, the Third-Party Defendant in  
16 the above-entitled action, by NICK BOZOVICH,  
17 held at the above time and place, pursuant to  
18 Notice, taken before Sandra Camerada, a  
19 shorthand reporter and Notary Public within and  
20 for the State of New York.  
21  
22  
23  
24  
25

<p>1 Bozovich 62</p> <p>2 have a present memory -- I don't want to say</p> <p>3 something that is not -- if you have something</p> <p>4 that indicates different, but I believe it's</p> <p>5 something other than the Franklin location.</p> <p>6 Q If both the Franklin location and</p> <p>7 the Louisville location were required to be</p> <p>8 considered for a deductible, would that</p> <p>9 increase the deductible, make it a higher</p> <p>10 number?</p> <p>11 A Yes.</p> <p>12 Q Let me hand you what's been marked</p> <p>13 as Exhibit 30 previously. This is a March 15,</p> <p>14 2002 report from yourself to Lon Barrick. Do</p> <p>15 you recall drafting this claim report?</p> <p>16 A Yes.</p> <p>17 Q I direct your attention to page 3</p> <p>18 and in particular the paragraph directly below</p> <p>19 the daily value deductible. In that paragraph,</p> <p>20 you state "since a loss occurred at both</p> <p>21 locations, we recommend that the total of the</p> <p>22 ADV for both locations should be used to</p> <p>23 calculate the deductible for any extra expense</p> <p>24 claim remaining." ADV stands for average daily</p> <p>25 value, correct?</p>	<p>1 Bozovich 64</p> <p>2 A You are focusing on one paragraph</p> <p>3 that's three paragraphs of a section regarding</p> <p>4 coverage discussion, coverage questions, and I</p> <p>5 was trying to report that there's a question of</p> <p>6 coverage and what's covered and I was putting</p> <p>7 out options essentially or giving different</p> <p>8 scenarios I guess is the best way to put it.</p> <p>9 Q And your ultimate recommendation</p> <p>10 was that the total of the ADV for both</p> <p>11 locations should be used?</p> <p>12 A No. I don't believe that was my</p> <p>13 recommendation.</p> <p>14 Q Does this letter not state "we</p> <p>15 recommend that the total of the ADV for both</p> <p>16 locations should be used"?</p> <p>17 A If there's coverage for it, that</p> <p>18 would be the way it would be done, yes, but</p> <p>19 you're focusing on one paragraph and ignoring</p> <p>20 the paragraphs that go before it.</p> <p>21 Q I think at this point the letter</p> <p>22 can speak for itself.</p> <p>23 A If there is an extra expense loss,</p> <p>24 it specifically says "and claim at the Royal</p> <p>25 location, it would appear that the daily value</p>
<p>1 Bozovich 63</p> <p>2 A Correct.</p> <p>3 Q Is it accurate that you recommend</p> <p>4 the both Louisville and Franklin Ohio locations</p> <p>5 should be averaged together to calculate the</p> <p>6 deductible?</p> <p>7 A No. I don't think that's what I</p> <p>8 was recommending.</p> <p>9 Q Does it state "we recommend that</p> <p>10 the total of the ADV for both locations should</p> <p>11 be used"?</p> <p>12 A Yes, but the way you stated it, you</p> <p>13 were talking about averaging both and I don't</p> <p>14 think that was not my intention here. If it</p> <p>15 was something that you would cover, you would</p> <p>16 have to look at the average daily value for</p> <p>17 each location. You don't average them</p> <p>18 together. They would have to be looked at</p> <p>19 individually and applied individually.</p> <p>20 Q So it was your position, at this</p> <p>21 point, that a loss occurred at both locations?</p> <p>22 A No.</p> <p>23 Q Then how am I misunderstanding your</p> <p>24 sentence "since a loss occurred at both</p> <p>25 locations"?</p>	<p>1 Bozovich 65</p> <p>2 of both locations should form the basis for the</p> <p>3 two times average daily value deductible." The</p> <p>4 sentence starts out with "if," so yes, it</p> <p>5 should speak for itself.</p> <p>6 Q I hand you what has been previously</p> <p>7 marked as Exhibit 47. This is an April 5, 2002</p> <p>8 letter from yourself, Nick Bozovich to Steven</p> <p>9 Schulman. Do you recall sending this letter?</p> <p>10 A Yes.</p> <p>11 Q Is this the letter where</p> <p>12 Continental denied the claim for replacement</p> <p>13 product?</p> <p>14 A Let me just review it.</p> <p>15 Q Take your time.</p> <p>16 A Yes, it is.</p> <p>17 Q This letter makes no reference to</p> <p>18 any coverage argument or coverage basis that</p> <p>19 physical damage had not occurred at Louisville,</p> <p>20 correct?</p> <p>21 A Correct.</p> <p>22 Q Had you, in fact, by April 5, 2002</p> <p>23 informed Mafcote that there would be no</p> <p>24 coverage if there were no physical coverage at</p> <p>25 Louisville?</p>

<p>1 Bozovich 66</p> <p>2 A Can you repeat that?</p> <p>3 Q By April 5, 2002 when you made the</p> <p>4 claim denial, had you informed Mafcote that</p> <p>5 there would be no coverage under the policy if</p> <p>6 there were no physical damage at the Louisville</p> <p>7 facility?</p> <p>8 A No, I don't believe I did.</p> <p>9 Q That basis for denying coverage was</p> <p>10 raised for the first time at trial?</p> <p>11 MR. MINDLIN: Objection to</p> <p>12 the form of the question.</p> <p>13 A I don't know when it was raised for</p> <p>14 the first time.</p> <p>15 Q Do you recall winning an insurance</p> <p>16 coverage lawsuit?</p> <p>17 A Yes, twice.</p> <p>18 Q Twice?</p> <p>19 A Well, in the District Court and the</p> <p>20 Court of Appeals.</p> <p>21 Q In any event, do you recall the</p> <p>22 basis for why Continental won that case?</p> <p>23 A Yes.</p> <p>24 Q And that basis --</p> <p>25 A In part was that there was no</p>	<p>1 Bozovich 68</p> <p>2 you that third party purchases could be made,</p> <p>3 replacement product purchases?</p> <p>4 A You're asking me to confirm that</p> <p>5 they could be made?</p> <p>6 Q Yes.</p> <p>7 MR. MINDLIN: Note my</p> <p>8 objection to the form of the</p> <p>9 question. You could answer.</p> <p>10 A I think that was the whole</p> <p>11 substance of our disagreement was third party</p> <p>12 purchases and whether they were covered or not</p> <p>13 almost from the beginning of the adjustment.</p> <p>14 Q Prior to those purchases being</p> <p>15 made, no one at Mafcote or on Mafcote's behalf</p> <p>16 informed on Continental that they were go to be</p> <p>17 made?</p> <p>18 A Well, we didn't have notice of the</p> <p>19 loss until the 14th and most of them were prior</p> <p>20 to the 14th.</p> <p>21 Q For instance, the purchases that</p> <p>22 were made on the August 21st --</p> <p>23 A They were billed on August 21st,</p> <p>24 the invoice dated August 21st. I don't know</p> <p>25 when they were actually ordered or purchased.</p>
<p>1 Bozovich 67</p> <p>2 damage at the Royal location.</p> <p>3 Q And the Royal location being in</p> <p>4 Louisville?</p> <p>5 A Correct.</p> <p>6 Q Do you recall prior to that suit</p> <p>7 being commenced whether that basis for denying</p> <p>8 coverage had been raised? It wasn't raised by</p> <p>9 April 2, 2002, correct?</p> <p>10 A That's correct. I just don't</p> <p>11 recall when that was first raised. It was</p> <p>12 raised at some point, I just don't remember</p> <p>13 when.</p> <p>14 MR. WALULIK: Let's take a</p> <p>15 break. I'm going to go over my</p> <p>16 notes. Your counsel or Mr. Greer</p> <p>17 may have questions for you as</p> <p>18 well.</p> <p>19 (Whereupon, a recess was</p> <p>20 taken at this time.)</p> <p>21 Q Just a couple of quick follow-up</p> <p>22 questions, Mr. Bozovich.</p> <p>23 A Sure.</p> <p>24 Q After August 15, 2001, did anyone</p> <p>25 at Mafcote or on Mafcote's behalf confirm with</p>	<p>1 Bozovich 69</p> <p>2 Q I'm just trying to understand,</p> <p>3 Continental did not have notice prior to those</p> <p>4 purchases being made that they were going to be</p> <p>5 made by Mafcote?</p> <p>6 A I don't remember that.</p> <p>7 Q Did anyone at Mafcote or on</p> <p>8 Mafcote's behalf ever tell you that they didn't</p> <p>9 have a copy of their insurance policy?</p> <p>10 A I don't remember that at all.</p> <p>11 MR. WALULIK: Let's have</p> <p>12 this marked as Exhibit 57.</p> <p>13 (Plaintiff's Submission of</p> <p>14 Expert Report of Joseph R.</p> <p>15 Blumberg was marked as Joint</p> <p>16 Exhibit 57, for identification,</p> <p>17 as of this date.)</p> <p>18 Q This is an expert report by an</p> <p>19 individual named Joseph R. Blumberg that has</p> <p>20 been filed by Mafcote in this case on Mafcote's</p> <p>21 behalf.</p> <p>22 Have you had an opportunity at all</p> <p>23 to review this report prior to your deposition</p> <p>24 today?</p> <p>25 A No.</p>

<p>1 Bozovich 70</p> <p>2 Q I'm simply interested in</p> <p>3 Mr. Blumberg's expert opinions. Take a look at</p> <p>4 page 3 of 5, if you could, simply read the</p> <p>5 first paragraph. Let me know when you are</p> <p>6 finished. I'm going to ask you a couple of</p> <p>7 questions about Mr. Blumberg's opinions, your</p> <p>8 own views on those?</p> <p>9 A Okay.</p> <p>10 Q If we can for a second not consider</p> <p>11 the issue as to the timing of this loss August</p> <p>12 13th versus product that was cancelled prior or</p> <p>13 anything like that --</p> <p>14 A You mean the timing of the report?</p> <p>15 Q Correct.</p> <p>16 A Okay.</p> <p>17 Q If the Franklin Ohio affiliate had</p> <p>18 been the one to purchase replacement product,</p> <p>19 would that have resolved the damage to the</p> <p>20 location issue that was litigated in the first</p> <p>21 insurance coverage case in your opinion?</p> <p>22 MR. MINDLIN: I'm going to</p> <p>23 object to the question. I direct</p> <p>24 him not to answer. He's here as</p> <p>25 a fact witness, not to give</p>	<p>1 Bozovich 72</p> <p>2 MR. MINDLIN: Yes, that</p> <p>3 particular question, yes. If you</p> <p>4 ask another question, we'll take</p> <p>5 another shot at it.</p> <p>6 Q The first sentence of that</p> <p>7 paragraph read "if Miami had submitted the</p> <p>8 extra expense claim and had gone into the</p> <p>9 market to supply paper at the extra cost and</p> <p>10 had suffered the loss, CNA would have had to</p> <p>11 pay the claim." Do you agree with that</p> <p>12 statement?</p> <p>13 MR. MINDLIN: I object to</p> <p>14 the form. You could give your</p> <p>15 understanding.</p> <p>16 A It doesn't qualify when the</p> <p>17 purchases would have been made in relation to</p> <p>18 when the loss was reported, so I wouldn't</p> <p>19 necessarily agree with it, but if you want to</p> <p>20 qualify that further.</p> <p>21 Q If we qualify it to eliminate the</p> <p>22 timing issue, is that a correct statement?</p> <p>23 MR. MINDLIN: Again, I</p> <p>24 object to the form. You can give</p> <p>25 your understanding.</p>
<p>1 Bozovich 71</p> <p>2 opinions.</p> <p>3 MR. WALULIK: He's here as a</p> <p>4 fact witness who handled the</p> <p>5 claim. He's testified that it is</p> <p>6 his job responsibility to take</p> <p>7 facts and apply them to coverage.</p> <p>8 I'm just simply asking him if</p> <p>9 that fact were present, would it</p> <p>10 resolve the coverage? I think</p> <p>11 he's qualified to answer that.</p> <p>12 MR. MINDLIN: He may be</p> <p>13 qualified as an expert to answer</p> <p>14 it, but he's not here to answer</p> <p>15 expert questions or give</p> <p>16 opinions. He's here to tell you</p> <p>17 the facts as to what he did as</p> <p>18 his job on behalf of CNA and he's</p> <p>19 done that. If you ask a proper</p> <p>20 question, he could give an</p> <p>21 answer. That's an opinion</p> <p>22 question and it's not</p> <p>23 appropriate.</p> <p>24 MR. WALULIK: Are you</p> <p>25 instructing him not to answer?</p>	<p>1 Bozovich 73</p> <p>2 A If there was no issue of</p> <p>3 commencement of liability that there was in</p> <p>4 this claim, yes, I would agree with that.</p> <p>5 Q I'm just going to ask you couple</p> <p>6 quick questions about the second paragraph.</p> <p>7 Are you familiar with a type of</p> <p>8 insurance coverage called contingent business</p> <p>9 interruption and extra expense insurance?</p> <p>10 A Yes.</p> <p>11 Q I'm going to show you what's</p> <p>12 previously been marked as Exhibit 12. Take a</p> <p>13 look at that. Are you familiar with that</p> <p>14 coverage form?</p> <p>15 MR. WALULIK: Just so the</p> <p>16 record is clear, this is a</p> <p>17 contingent business interruption</p> <p>18 coverage form that is a CNA form.</p> <p>19 A Yes.</p> <p>20 Q Is it Continental's position that</p> <p>21 upon payment of a contingent business</p> <p>22 interruption loss, Continental is subrogated to</p> <p>23 the rights of the policyholder?</p> <p>24 MR. MINDLIN: Objection to</p> <p>25 the form. Give your</p>